Remarks

This Response is considered fully responsive to the Office Action mailed July 26, 2007. Claims 1-29 were pending in the application. Claims 1-29 stand rejected. In this Response, claim 7 is amended to correct an error in dependency. No new matter has been added. Claims 1-29 are now pending in the application. Reexamination and reconsideration are requested.

Request for Withdrawal of Finality of Office Action

At page 2, the Office Action indicates that "Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**." Applicants respectfully disagree that Applicant's amendments to the claims necessitated new grounds of rejection. Therefore, Applicants assert that the finality of this Office Action is premature and improper.

Independent claim 1 was previously amended to delete a portion of the preamble, and to place the claim in better form. The subject matter of claim 1 remains the same. Claims 4-6 were amended only to correct errors in dependency. Independent claim 8 was amended only to delete a portion of the preamble and to correct informalities. The subject matter of independent claim 8 remains the same. Claims 9-15 and 17 were amended to be consistent with claim 8, from which they depend, and to correct informalities. Claim 16 was amended to be consistent with independent claim 8 and to delete a limitation. Claim 18 was amended only to delete a portion of the preamble. The subject matter of claim 18 remains the same. Claim 26 was amended only to delete a portion of the preamble and to clarify that resources are "hardware and software" resources. The subject matter of claim 26 remains the same. Claims 27-29 were amended only to be consistent with claim 26, from which they depend.

MPEP §706.07(a) states that "[b]efore final rejection is in order a clear issue should be developed between the examiner and applicant." Applicants respectfully submit that, although the claimed subject matter has not changed, European Patent Application EP1211596 A1 to Brebner ("Brebner") is newly cited as the primary reference in this Final Office Action. Features of the claims which the Office previously alleged to be taught by U.S. Patent No. 6,151,643 to Cheng, et al. ("Cheng") are now alleged to be taught by Brebner instead. Thus, Applicants disagree with the assertion that "Applicant's arguments with respect to claims 1-29 have been considered but are moot in view of the new ground(s) of rejection." See Final Office Action at

page 2. Rather, it appears that Applicants' arguments to overcome Cheng were indeed persuasive because the subject matter of the claims has not changed. Accordingly, Applicants request reconsideration and withdrawal of the finality of this Office Action.

Claim Objections

Claim 7 stands objected to because of an error in dependency. Accordingly, claim 7 has been amended to depend from claim 6. Thus, Applicants submit that this objection is moot.

Rejections Under 35 U.S.C. § 102

Claims 1, 2, 8, 9, 10, 18, 20, 22-24, 26 stand rejected under 35 U.S.C. § 102(b) as being purportedly anticipated by European Patent Application EP1211596 A1 to Brebner ("Brebner"). All rejections are respectfully traversed.

With respect to independent claim 1, Brebner is alleged to teach "storing a data structure that defines hardware resources and software resources of a local device at a computer associated with the local device." More specifically, the Office appears to equate the conformity server 3 of Brebner, discussed at paragraphs [0027-0029], with the data structure of independent claim 1. Applicants, however, disagree.

The conformity server 3 of Brebner includes "a database having information therein loaded which is representative of **typical configurations of machines fitted for some different software configurations**." Brebner at paragraph [0027] (emphasis added). Thus, the conformity server of Brebner merely stores **configurations that are representative of typical hardware/software configurations**, but that are completely unrelated to any specific local device. Thus, the configuration server of Brebner does not store "a data structure that defines hardware and software resources of a local device at a computer associated with the local device" as recited in independent claim 1.

Further, at page 4 of the Final Office Action, the Office alleges that Brebner teaches "requesting a service from the remote service distribution system, the service including transmission of software to the local device, wherein definitions of the hardware resources and software resources of the local device from the data structure are transmitted to the remote service distribution system as part of the service request," as recited in independent claim 1, and

relies upon paragraph [0037] of Brebner in support of this allegation. Applicants, however, respectfully disagree.

Paragraph [0037] of Brebner describes a step in which a local agent 11 prepares a request for a transaction, and the transaction is transmitted to a monitoring server 3. However, the "transaction" described by Brebner is a comparison of hardware and software resources of a local device against an "ideal hardware configuration of the client machine, in terms of CPU speed, memory available, harddisk space etc...." Brebner at [0038]. At [0039], Brebner states that "[t]he conformity server 3 then compares, in a step 25, the real hardware representation with the ideal hardware representation that was calculated before for the purpose of determining any lack of hardware features or capacity in the actual machine configuration." Further, Brebner teaches that, if the actual configuration meets or exceeds the ideal configuration, the monitoring process ends. Brebner at [0040]. If the actual configuration does not meet the ideal configuration, the user is informed of the deficiency in hardware, and a query may be generated to order sufficient hardware to upgrade the computer so that it meets the ideal configuration. Brebner at [0041]-[0044]. Thus, Brebner merely teaches that a user will be informed of deficiencies in the hardware of his or her computer system, but fails to teach any transmission of software to the local device based on a request for a service. Accordingly, the transaction of Brebner does not include "requesting a service from the remote service distribution system, the service including transmission of software to the local device," as recited in independent claim 1.

For at least these reasons, Applicants respectfully submit that Brebner fails to teach all of the features of independent claim 1 and those claims depending directly or indirectly therefrom. Reconsideration of the rejection and allowance of independent claim 1 and those claims depending directly or indirectly therefrom are respectfully requested.

With respect to independent claim 8, the Office alleges that Brebner teaches "at least one service available to the remote device" as recited in independent claim 8, and cites Brebner at [0024], which discusses pushing the results of a conformity comparison to a web browser, so that a user can order hardware to upgrade his or her computer so that the computer meets the "ideal configuration" for the software already installed on the computer. The report generated in the web browser of Brebner, however, does not indicate any services available to the remote device. Rather, it merely provides the deficiencies in the hardware configuration of the machine and offers an opportunity to order hardware that will remedy those deficiencies. Applicants note that

software installed on the remote device is distinct from services available to but not yet installed on the remote device. Thus, Brebner fails to teach "at least one service available to the remote device," as recited in independent claim 8.

Additionally, with respect to independent claim 8, the Office alleges that Brebner teaches "a resource analysis module configured to analyze hardware resources on the remote device in relation to the at least one service," and cites Brebner at [0038] in support of this allegation. However, as discussed above, Brebner merely discloses comparing the existing hardware configuration with the ideal hardware configuration for the software installed on the local computer. Thus, according to Brebner, the hardware resources on the remote device are analyzed in relation to the **software installed on the remote device**, which is distinct from the services available to but not yet installed on the remote device. Brebner fails to disclose an analysis of the hardware resources on the remote device in relation to any services **available to** the remote device, as recited in independent claim 8.

For at least these reasons, Applicants respectfully submit that Brebner fails to teach all of the features of independent claim 8 and those claims depending directly or indirectly therefrom. Reconsideration of the rejection and allowance of independent claim 8 and those claims depending directly or indirectly therefrom are respectfully requested.

Dependent claim 9 recites, *inter alia*, "a storage device that stores software packages pertaining to the at least one service." While the Office alleges that Brebner teaches this feature at FIGS. 1, 3, and 4 and [0028], Applicants respectfully disagree. Brebner is silent as to the storage of software packages that pertain to services. Indeed, none of FIGS. 1, 3, and 4 or [0028] discuss any software other than that which is **installed** on the remote device. Thus, Brebner fails to disclose "a storage device that stores software packages pertaining to the at least one service," as recited in claim 9. For at least this reason, and those set forth above with respect to independent claim 8, reconsideration of the rejection and allowance of dependent claim 9 are respectfully requested.

With respect to independent claim 18, the Office alleges that Brebner teaches "displaying a list of available services that are compatible with the hardware resources on the remote device," as recited in independent claim 18, and cites Brebner at [0030], [0042], and [0045] in support of this assertion. However, in [0030], "an information displayed to the user for informing the latter that an upgrade operation of his computer is appropriate or even necessary"

is unrelated to a list of available services that are compatible with the existing hardware resources on the remote device. Rather, the display of such information, even in the form of an HTML page, is merely an indication of hardware deficiencies in the remote device, where the deficiencies are identified with respect to the software installed on the remote device. Brebner provides no teachings regarding displaying services that are compatible with the hardware on the remote device.

The Office also alleges that Brebner teaches "receiving a request to perform at least one service including at least one initial service," and cites [0037] in support of this allegation. However, the only "service" disclosed by Brebner is the comparison of the hardware/software configuration of the remote device with the "ideal" hardware configuration for that software configuration. The service taught by Brebner is not a service that is determined to be compatible with the hardware resources on the remote device. Further, "pushing" the determination of that comparison to a web browser is not performing a service that is compatible with the existing hardware configuration.

For at least these reasons, Applicants respectfully submit that Brebner fails to teach all of the features of independent claim 18 and those claims depending directly or indirectly therefrom. Reconsideration of the rejection and allowance of independent claim 18 and those claims depending directly or indirectly therefrom are respectfully requested.

Dependent claim 20 recites, *inter alia*, "if the hardware resources available on the remote device were not fully identified, prompting a user of the remote device to manually input the hardware resources available on the remote device." The Office alleges that Brebnter teaches this at [0064]. However, [0064] of Brebner merely discloses that, if the hardware resources are deemed insufficient in the comparison step, the user is informed of the deficiency, and may be prompted to order hardware to cure the deficiency. Claim 20, in contrast, provides for a user to manually enter information regarding the hardware configuration of his or her system when hardware is not discovered or identified. By providing for a user to manually enter information, **prior to any comparison or analysis**, a more accurate analysis of the system may be conducted. Brebner, however, relies on automated detection of hardware and fails to provide for manual entry of configuration information when automated detection or identification does not occur. For at least this reason, and those set forth above with respect to independent claim 18, reconsideration of the rejection and allowance of dependent claim 20 are respectfully requested.

Claim 23 recites, *inter alia*, "displaying a list of available services that are compatible with the hardware resources available on the remote device further comprises analyzing available services in relation to the hardware resources available on the remote device." Brebner is alleged to teach this feature at [0029]. However, [0029] of Brebner merely discloses that technical parameters regarding the user's computer are automatically gathered and stored. As discussed with respect to independent claim 8, absent from Brebner is any teaching of displaying a list of available services or analyzing those services with respect to the hardware resources available on the remote device. For at least this reason, and those set forth above with respect to independent claim 18, reconsideration of the rejection and allowance of dependent claim 23 are respectfully requested.

With respect to independent claim 26, the Office again alleges that Brebner teaches "analyzing the hardware and software resources available on the remote device in relation to one or more services available on a service distribution system" and "displaying a list of services that would enhance the hardware and software resources on the remote device." However, as discussed above, Brebner only teaches the comparison of existing hardware/software resources of a remote device with the "ideal configuration" for the software already installed on the remote device. Brebner fails to disclose any analysis of hardware/software resources with respect to one or more services available on a service distribution system or displaying a list of services that would enhance the hardware and software resources on the remote device.

For at least these reasons, Applicants respectfully submit that Brebner fails to teach all of the features of independent claim 26 and those claims depending directly or indirectly therefrom. Reconsideration of the rejection and allowance of independent claim 26 and those claims depending directly or indirectly therefrom are respectfully requested.

Rejections Under 35 U.S.C. § 103

Claims 3-7, 11-17, 19, 21, 25, 27-29 stand rejected under 35 U.S.C. § 103(a) as being purportedly unpatentable to Brebner in view of U.S. Patent No. 6,151,643 to Cheng, et al. ("Cheng"). All rejections are respectfully traversed.

Applicants respectfully submit that Cheng fails to teach or suggest at least the aforementioned features of the independent claims from which claims 3-7, 11-17, 19, 21, 25, and 27-29 depend. Accordingly, Cheng fails to remedy the deficiencies of Brebner. Thus, without

conceding the propriety of the combination, Brebner and Cheng fail to teach or suggest all of the features of claims 3-7, 11-17, 19, 21, 25, and 27-29. Reconsideration and withdrawal of the rejection of claims 3-7, 11-17, 19, 21, 25, and 27-29 are respectfully requested.

Conclusion

Claims 1-29 are currently pending in the application. Applicants have fully responded to each and every objection and rejection in the Office action dated July 26, 2007 and believes that claims 1-29 are in a condition for allowance. Applicants therefore request that a timely Notice of Allowance be issued in this case.

Applicants believe no other fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this a request therefor and authorization to charge Deposit Account No. 50-3199 as necessary.

If the Examiner should require any additional information or amendment, please contact the undersigned attorney. If the Examiner believes any issues could be resolved via a telephone interview, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: September 26, 2007

/Richard J. Holzer, Jr./
Richard J. Holzer, Jr. Reg. No. 42,668
Attorney for Applicant
USPTO Customer No. 64776

HENSLEY KIM & HOLZER, LLC
1660 Lincoln Street, Suite 3000
Denver, Colorado 80264
Tel: 720-377-0770
Fax: 720-377-0777